

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

AMERICAN SPIRIT FEDERAL CREDIT UNION

Employer

and

Case 5-RC-15581

UNITED AUTO WORKERS
INTERNATIONAL UNION, AFL-CIO

Petitioner

REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement¹ approved on May 28, 2003,² a secret-ballot election was conducted under my supervision on June 25, with the following results:

Approximate number of eligible voters	18
Void ballots	1
Votes cast for Petitioner	11
Votes cast against participating labor organization	4
Valid votes counted	15
Challenged ballots	0
Valid votes counted plus challenged ballots	15

Challenges were not sufficient in number to affect the results of the election.

The Employer filed timely objections to conduct of and conduct affecting the results of the election on July 2.³

¹ The unit is: "All full-time and part-time loan officers, collections officers, resource representatives, financial services officers and tellers employed by the Employer at its Newark, Delaware facility, and excluding all professional employees, confidential employees, guards, and supervisors as defined in the Act." The eligibility period is the payroll period ending May 25, 2003.

² Unless otherwise noted, all dates are in 2003.

³ The petition was filed on May 14. I will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of the filing of the petition and extends through the election. Goodyear Tire and Rubber Company, 138 NLRB 453.

THE OBJECTIONS

OBJECTION 1

The Union, by and through its agents and representatives, sent a letter to all eligible voters which unlawfully threatened adverse consequences to ASFCU, and, by extension, the employees, if the employees voted against union representation.

In support of Objection 1, the Employer submitted an undated letter it contends was circulated to its employees by the Union on or about June 10, in which the Union threatened the Employer with adverse financial consequences if the Employer opposed the Union's organizational efforts. Specifically, the letter states "[m]aybe we Union members should take our money where we are appreciated." The letter is purportedly signed by 24 active and retired Union members.

Additionally, the Employer alleged the Union, by its representative Sam Ferrara, engaged in further objectionable conduct when Ferrara placed a telephone call to the Employer's Chief Executive Officer on June 13, and threatened the Employer with adverse financial consequences if it did not stop conducting an anti-union campaign. The Employer provided a transcript of this conversation in which it alleged Ferrara stated, in part.

I am hereby telling you that, if that campaign fails, I will pull out my funds. My daughter will pull out her funds, and I will give it to my constituency to pull out there (sic) funds and quit contributing to your Coffer (into their accounts). They can go to their private banks. I will suggest that you stop running an anti-union campaign, or you are going to lose a whole lot of deposits.

The Employer contends the foregoing conduct by the Union amounts to a threat against both itself and its employees. Because such conduct is likely to have coerced and intimidated the employees eligible to vote in the representation election, the Employer asserts the results of the election must be set aside.

In evaluating the evidence before me, I note the Employer presented no objective evidence to establish a union representative or its agent authored the letter. There is also no evidence the letter was ever distributed to any employee or, if so, whether it was distributed by, or at the direction of, a union representative. Similarly, the Employer presented no evidence to establish that Ferrara is a union representative or that he made the telephone call at the direction of the Union.⁴ There also is no evidence Ferrara's statement was ever communicated to any employee.

Because there is no evidence of Union involvement in the alleged misconduct, the test to be applied in determining if the election should be set aside is whether the misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). In the present case, the misconduct alleged involves two threats of economic harm to the Employer in retaliation for its anti-union position. Whether a threat is serious and likely to intimidate prospective voters to cast their ballots in a particular manner, depends on the threat's character and circumstances and not merely on the number of employees threatened. Id. at 803. In determining the seriousness of a threat, the Board evaluates not only the nature of the threat itself, but, also whether the threat encompassed the entire bargaining unit, whether reports of the threat were disseminated widely within the unit, whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat. Id. Finally, the Board has held that "courts are hesitant to overturn elections when statements cannot be attributed to the union because 'there generally is less likelihood that they affected the outcome'." Cal-West Periodicals, Inc., 330 NLRB 599, 600 (2000). (quoting NLRB v. Eskimo

⁴ Indeed, the only evidence in this regard presented by the Employer indicates Ferrara is an employee at the Daimler/Chrysler Newark assembly plant. There is no indication whether Ferrara is an officer or even a member of the Petitioner or any other labor organization.

Radiator Mfg. Co., 688 F.2d 1315, 1319 (9th Cir. 1982) (quoting NLRB v. Mike Vorosek & Sons, 597 F.2d 661, 663 (9th Cir.) Cert. denied 444 U.S. 839 (1979).

In applying Board's test as set forth above, I find the alleged conduct does not warrant a setting aside of the election results. In reaching this conclusion, I have considered the fact that there is no evidence, whatsoever, that either the letter or the content of Ferrara's telephone conversation were actually disseminated to a single bargaining unit employee. In addition, the Petitioner did not establish that either Ferrara or the letter's unknown author were capable of causing economic harm to the Employer, or that the employees act in fear of this capability. Under these circumstances, I find the Employer has not established that the alleged misconduct created a "general atmosphere of fear and reprisal" among the employees that would preclude a fair election. Accordingly, I recommend that Objection 1, be overruled.⁵

OBJECTION 2

The above-referenced action virtually destroyed the laboratory conditions required for a free and fair election and materially affected the results of the election.

Objection 2 does not allege any specific acts of misconduct. The Employer did not submit any evidence in support of this objection other than the evidence it submitted in support of Objection 1. It is merely a conclusory objection that the totality of the Union's conduct created an atmosphere of fear and coercion that interfered with the exercise of free choice by the employees. Evaluating the totality of the Union's alleged misconduct and its effect on the laboratory conditions under which the election was conducted, I find, that in reaching this conclusion, I note my above finding with respect to Objection 1, and the lack of any other

⁵ Even assuming arguendo, the Petitioner was found to be responsible for the conduct alleged to be objectionable. I nevertheless would find such conduct insufficient to warrant setting aside the election given the absence of any evidence of dissemination to employees.

evidence supporting Objection 2. There is no basis for setting aside the election. Accordingly, I recommend that Objection 2, be overruled.

SUMMARY

I recommend the Employer's Objections are overruled in their entirety, and the appropriate Certification of Representative issue.

Dated at Baltimore, Maryland this 21st day of July, 2003.

(SEAL)

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Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report, if filed, must be filed with the Board in Washington, D.C. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of objections and which are not included in the Report, are not a part of the record before the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. Exceptions must be received by the Board in Washington by August 4, 2003.